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FILED

Board of Vocational Nursing
and Psychiatric Technicians

8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

13 **KIMBERLY SHERI BELL**

14 Post Office Box 635
Atascadero, CA 93423

15 Psychiatric Technician License No. PT 31681

16 Respondent.

Case No. PT-2003-1229 / PT-2005-1805

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in
20 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
21 Technicians, Department of Consumer Affairs.

22 2. On or about April 30, 2003, the Board of Vocational Nursing and Psychiatric
23 Technicians issued Psychiatric Technician License Number PT 31681 to Kimberly Sheri Bell
24 (Respondent). The Psychiatric Technician License was in full force and effect at all times
25 relevant to the charges brought herein and will expire on February 28, 2013, unless renewed.

26 3. In a disciplinary action entitled "In the Matter of the Accusation Against Kimberly
27 Sheri Bell", Case No. PT-2003-1229/PT-2005-1805, the Board of Vocational Nursing and
28 Psychiatric Technicians issued its decision in the Stipulated Settlement and Disciplinary Order,

1 effective March 27, 2008. Pursuant to that decision, Respondent's license was revoked; however,
2 the revocation was stayed and Respondent was placed on probation for a period of three (3) years
3 with certain terms and conditions. A copy of that *Decision* is attached as **Exhibit A** and is
4 incorporated herein by reference.

5 4. The terms and conditions of probation provide at Condition 12 of the *Decision* that
6 "(i)f Respondent violates the conditions of her probation, the Board after giving the Respondent
7 notice and an opportunity to be heard, may set aside the stay order and impose the stayed
8 discipline, revocation of the Respondent's license." Condition 12 further provides that if "an
9 accusation or petition to revoke probation has been filed against Respondent's license or the
10 Attorney General's Office has been requested to prepare an accusation or petition to revoke
11 probation against the Respondent's license, the probationary period shall automatically be
12 extended and shall not expire until the accusation or petition has been acted upon by the Board."

13 5. On or about December 9, 2010, the Board requested that the Attorney General's
14 Office prepare an accusation and petition to revoke probation against the Respondent's license,
15 thereby automatically extending the probation period, which will not expire until the accusation
16 and/or petition has been acted upon by the Board.

17 6. The psychiatric technician license was in effect at all times relevant to the charges
18 brought herein and will expire on February 28, 2013, unless renewed.

19 **JURISDICTION**

20 7. This Accusation and Petition to Revoke Probation is brought before the Board of
21 Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under
22 the authority of the following laws. All section references are to the Business and Professions
23 Code unless otherwise indicated.

24 **STATUTORY PROVISIONS**

25 8. Section 4520 of the Business and Professions Code (Code) provides, in pertinent part,
26 that the Board may discipline any licensed psychiatric technician for any reason provided in
27 Article 3 (commencing with section 4520) of the Psychiatric Technicians Law (Code § 4500, et.
28 seq.)

1 9. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license
2 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period
3 within which the license may be renewed, restored, reissued or reinstated. Under section 4545 of
4 the Code, the Board may renew an expired license at any time within four years after the
5 expiration.

6 10. Section 4521 of the Code states:

7 "The board may suspend or revoke a license issued under this chapter [the Psychiatric
8 Technicians Law (Bus. & Prof Code, 4500, et seq.)] for any of the following reasons:

9 "(a) Unprofessional conduct, which includes but is not limited to any of the following:

10 . . .

11 (5) Use any controlled substance as defined in Division 10 (commencing with
12 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in
13 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
14 injurious to himself or herself, any other person, or the public or to the extent that the
15 use impairs his or her ability to conduct with safety to the public the practice
16 authorized by his or her license.

17 . . .

18 (7) Be committed or confined by a court of competent jurisdiction for
19 intemperate use of or addiction to the use of any of the substances described in
20 paragraphs (4) and (5), in which event the court order of commitment or confinement
21 is prima facie evidence of the commitment or confinement.

22 . . .

23 "(f) Conviction of any offense substantially related to the qualifications, functions, and
24 duties of a psychiatric technician, in which event the record of the conviction shall be conclusive
25 evidence of the conviction. The board may inquire into the circumstances surrounding the
26 commission of the crime in order to fix the degree of discipline.

27 . . .

1 11. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
2 revoke a license when it finds that the licensee has been convicted of a crime substantially related
3 to the qualifications, functions, or duties of a licensed psychiatric technician.

4 12. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
5 administrative law judge to direct a licensee found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case.

8 13. California Code of Regulations, title 16, section 2578, states:

9 "For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5
10 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
11 considered to be substantially related to the qualifications, functions or duties of a licensed
12 psychiatric technician if to a substantial degree it evidences present or potential unfitness of a
13 licensed psychiatric technician to perform the functions authorized by his license in a manner
14 consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be
15 limited to those involving the following:

16 "(a) Procuring a license by fraud, misrepresentation, or mistake.

17 "(b) A conviction of practicing medicine without a license in violation of Chapter 5 of
18 Division 2 of the Business and Professions Code.

19 "(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
20 violation of, or conspiring to violate any provision or term of Chapter 10, Division 2 of the
21 Business and Professions Code.

22 "(d) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a
23 licensed physician or not, in the performance of or arranging for a violation of any of the
24 provisions of Article 13, Chapter 5, Division 2 of the Business and Professions Code.

25 "(e) Conviction of a crime involving fiscal dishonesty.

26 "(f) Any crime or act involving the sale, gift, administration, or furnishing of 'narcotics or
27 dangerous drugs or dangerous devices' as defined in Section 4022 of the Business and Professions
28 Code."

14. Section 492 of the Code states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

"This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

15. Section 493 of the Code provides in pertinent part:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question."

ACCUSATION

FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

16. Respondent is subject to disciplinary action pursuant to Code sections 4521, subdivision (f), and 490 in that Respondent has been convicted of the following crimes that are

1 substantially related to the qualifications, functions, and duties of a licensed psychiatric
2 technician:

3 **DRIVING UNDER THE INFLUENCE (August 2010)**

4 a. On October 12, 2010, in the Superior Court, San Luis Obispo County, San Luis
5 Obispo Branch, California, in the matter entitled *People vs. Kimberly Sheri Bell*, Case No.
6 M451217, Respondent was convicted by the court following her plea of no contest to a violation
7 of Vehicle Code section 23152, subdivision (b) (driving under the influence of alcohol or drugs),
8 a misdemeanor; and admitted, in enhancement of sentence, that she had a blood alcohol content
9 exceeding .20% of higher within the meaning of Vehicle Code section 23538, subdivision (b) (2).

10 b. The circumstances of the crime are that on or about August 13, 2010, after receiving a
11 complaint from Respondent's domestic partner that Respondent had left their residence driving in
12 an intoxicated state, an Atascadero Police Department officer located and stopped Respondent's
13 vehicle. The officer immediately observed objective indications of intoxication. When
14 questioned, Respondent admitted that she had been drinking. Respondent was unable to
15 accomplish tasks in field sobriety testing. Respondent consented to a breath test, which was
16 conducted at the scene with a result of .21/21% BAC (Blood Alcohol Content).

17 c. Respondent was sentenced to 3 years probation, 10 days in county jail, required to
18 complete a 9 month 'First Offender' program and required to pay fines and court fees.

19 **PUBLIC INTOXICATION (July 2010)**

20 d. On September 2, 2010, in the Superior Court, San Luis Obispo County, San Luis
21 Obispo Branch, California, in the matter entitled *People vs. Kimberly Sheri Bell*, Case No.
22 M449784, Respondent was convicted by the court following her plea of no contest to a violation
23 of Penal Code section 647, subdivision (f) (public intoxication), a misdemeanor.

24 e. The circumstances of the crime are that on or about July 30, 2010, after responding to
25 a domestic incident call, Atascadero Police Department officers found Respondent sitting on the
26 ground across the street from her residence, so "heavily intoxicated" that she could not stand
27 without falling. Officers observed that Respondent's eyes were red and glassy, that her speech
28 was slurred, and that she had an odor of alcohol on her breath.

1 SECOND CAUSE FOR DISCIPLINE

2 **(Criminal Convictions Involving Alcohol)**

3 17. Respondent is subject to disciplinary action pursuant to Code section 4521,
4 subdivision (a)(7), on the grounds of unprofessional conduct, in that Respondent has been twice
5 convicted of crimes involving intemperate use and consumption of alcohol as more particularly
6 set forth in paragraph 16, above.

7 THIRD CAUSE FOR DISCIPLINE

8 **(Use Alcohol to an Extent or in a Manner Dangerous or Injurious to Himself)**

9 18. Respondent is subject to disciplinary action pursuant to Code section 4521,
10 subdivision (a)(5), on the grounds of unprofessional conduct, in that on or about July 30, 2010
11 and again on August 13, 2010, Respondent used alcohol to an extent or in a manner dangerous or
12 injurious to herself, as more particularly set forth in paragraph 16, subparagraphs a through e
13 above.

14 PETITION TO REVOKE PROBATION

15 FIRST CAUSE TO REVOKE PROBATION

16 **(Failed to Obey All Laws; Failed to Timely Notify Board of Violation)**

17 19. At all times after the effective date of Respondent's probation, Condition 1 stated:

18 "Respondent shall obey all federal, state and local laws, including all statutes and
19 regulations governing the license. Respondent shall submit, in writing, a full and detailed
20 account of any and all violations of the law, to the Board within five (5) days of occurrence.

21 To ensure compliance with this term, respondent shall submit two (2) completed
22 fingerprint cards and the applicable fingerprint processing fees to the Board within thirty
23 (30) days of the effective date of the decision, unless the Board determines that fingerprints
24 were already submitted by Respondent as part of her licensure application process effective
25 July 1, 1996.

26 Respondent shall also submit a recent 2" x 2" photograph of herself within thirty
27 (30) days of the effective date of the decision."

28 20. Respondent's probation is subject to revocation because she failed to obey all laws,

1 by reason of her criminal convictions on October 12, 2010 for Driving Under the Influence
2 Vehicle Code section 23152, subdivision (b) with enhancement under Vehicle Code section
3 23538, subdivision (b) (2) and on September 2, 2010 for Public Intoxication (Penal Code section
4 647, subdivision (f)), as more fully described in paragraph 16, above.

5 21. As a second, separate violation of Condition 1, Respondent failed to timely
6 submit a full and detailed account of any and all violations of the law, including alleged violations
7 within five (5) days of occurrence as required by the express terms of the condition:

8 a. **Late Notice of Violation July 30, 2010.**

9 Respondent was arrested on July 30, 2010. No detailed account of the arrest incident
10 was received by the Board until August 9, 2010 (9 days afterward).

11 b. **Late Notice of Violation August 13, 2010.**

12 Respondent was arrested on August 13, 2010. No detailed account of the arrest
13 incident was received by the Board until August 31, 2010 (18 days afterward).

14 **SECOND CAUSE TO REVOKE PROBATION**

15 **(Failed to Abstain From Use of Alcohol)**

16 22. At all times after the effective date of Respondent's probation, Condition 16 stated:
17 "Respondent shall completely abstain from the use of alcoholic beverages during the period
18 of probation."

19 23. Respondent's probation is subject to revocation because:

20 a. **Criminal Misconduct** - Respondent failed to abstain from use of alcohol, by
21 reason of alcohol-related misconduct underlying her criminal convictions for on October 12, 2010
22 for Driving Under the Influence (Vehicle Code section 23152, subdivision (b) with enhancement
23 under Vehicle Code section 23538, subdivision (b) (2)) and on September 2, 2010 for Public
24 Intoxication (Penal Code section 647, subdivision (f)), as more fully described in paragraph 16,
25 above.

26 b. **Two Week Relapse** - By her own admission, the alcohol-related misconduct on
27 July 30, 2010 underlying her criminal conviction for public intoxication was part of a relapse
28 from sobriety that lasted at least two weeks in the Summer of 2010.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Comply With Quarterly Report Requirements)

24. At all times after the effective date of Respondent's probation, Condition 2 stated:

“Respondent shall fully comply with terms and conditions of the probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Probation Program.

Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Board. The reports shall certify and document compliance with all the conditions of probation.”

25. Respondent's probation is subject to revocation because she failed to submit Quarterly Written Reports in a timely manner, as follows:

Reporting Period	Due Date	Date Received	Days Delinquent
April –June 2008	July 7, 2008	July 14, 2008	7
October—December 2008	January 7, 2009	January 20, 2009	13
January—March 2009	April 7, 2009	April 13, 2009	6
April –June 2009	July 7, 2009	July 31, 2009	24
July –September 2009	October 7, 2009	October 8, 2009	1
October—December 2009	January 7, 2009	February 1, 2010	25
January—March 2010	April 7, 2010	April 10, 2010	3
April—June 2010	July 7, 2010	July 16, 2010	9
July—September 2010	October 7, 2010	Not received to date	

FOURTH CAUSE TO REVOKE PROBATION

(Failed to Comply With Requirement For Submission of Performance Evaluations)

26. At all times after the effective date of Respondent's probation, Condition 5 stated:

“When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify her employer of the probationary status of Respondent's license. This notification to the Respondent's current health care employer

1 shall occur no later than the effective date of the Decision. Respondent shall notify any
2 prospective health care employer of her probationary status with the Board prior to
3 accepting such employment. This notification shall be by providing the employer or
4 prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

5 The Health Care Profession includes, but is not limited to: Licensed Vocational
6 Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic,
7 Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all
8 other ancillary technical health care positions.

9 Respondent shall cause each health care employer to submit quarterly reports to the
10 Board. The reports shall be on a form provided by the Board, shall include a performance
11 evaluation and other such information as may be required by the Board.

12 Respondent shall notify the Board, in writing, within five (5) days of any change in
13 employment status. Respondent shall notify the Board, in writing, if she is terminated
14 from any nursing or health care related employment with a full explanation of the
15 circumstances surrounding the termination.”

16 27. Respondent’s probation is subject to revocation because she failed to advise the
17 Board in writing of a change in her employment status occurring on dates approximately
18 December 12, 2010 through June 9, 2011, when she did not report to her job due to a non-
19 industrial disability.

20 28. As a second, separate violation of Condition 5, Respondent’s probation is subject
21 to revocation because she failed to ensure her employer submitted timely quarterly work
22 performance evaluations as required, per her initial probation compliance meeting with Board
23 staff. Respondent submitted late reports as follows:

24 ///

25 ///

26 ///

27 ///

28 ///

Reporting Period	Due Date	Date Received	Days Delinquent
April-June 2008	July 7, 2008	July 14, 2008	7
October-December 2008	January 7, 2009	January 20, 2009	13
January-March 2009	April 7, 2009	April 13, 2009	6
April-June 2009	July 7, 2009	July 31, 2009	24
July-September 2009	October 7, 2009	October 8, 2009	1
October-December 2009	January 7, 2010	January 14, 2010	7
January-March 2010	April 7, 2010	April 10, 2010	3
April-June 2010	July 7, 2010	July 16, 2010	9
July – September 2010	October 7, 2010	Not received to date	
October – December 2010	January 7, 2011	Not received to date	

FIFTH CAUSE TO REVOKE PROBATION

(Failure to Pay Cost Recovery)

29. At all times after the effective date of Respondent's probation, Condition 11 stated:

“Respondent shall pay to the Board pursuant to Business and Professions Code section 125.3 the costs of investigation and enforcement in this matter in the amount of \$4,199.75. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with the payments to be completed no later than three months prior to the end of the probation term. Failure to complete payment of cost recovery within this time frame shall constitute a violation of probation which may subject Respondent's license to outright revocation.”

30. Respondent's probation is subject to revocation because she failed to make timely payment of costs as required in condition 11, by reason of the following facts:

1 a. Respondent was ordered to pay \$ 4,199.75 in costs. Pursuant to an installment
2 agreement, Respondent made monthly payments toward costs. However, since approximately
3 December of 2008, Respondent has not complied with her installment agreement and has paid
4 nothing toward the remaining balance of costs, a sum of \$ 299.75.

5 b. Despite demand for payment notices mailed to her on or about December 29,
6 2008, April 5, 2010 and June 3, 2010, no additional payments were made. The unpaid balance
7 was referred to collections in September of 2010.

8 SIXTH CAUSE TO REVOKE PROBATION

9 **(Failure to Comply With Support Group Requirements)**

10 31. At all times after the effective date of Respondent's probation, Condition 14
11 stated:

12 "Within five (5) days of the effective date of the Decision, Respondent shall begin
13 attendance at a chemical dependency support group (e.g. Alcoholics Anonymous,
14 Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance
15 shall be submitted by Respondent with each quarterly report. Respondent shall continue
16 attendance in such a group for the duration of probation."

17 32. Respondent was instructed by the Board's probation monitor that, to comply with
18 Condition 14, she was required to: (1) attend two support group meetings per week, and (2)
19 submit documentary proof to verify compliance with each Quarterly Report.

20 33. Respondent's probation is subject to revocation because she failed to attend two
21 support group meetings weekly after being instructed to do so by the Board's probation monitor
22 and/or because she failed to submit required documentation with quarterly reports to the Board's
23 probation monitor in a timely manner, in order to establish and verify her compliance with
24 Condition 14.

25 SEVENTH CAUSE TO REVOKE PROBATION

26 **(Failed to Submit to Biological Fluid Testing)**

27 34. At all times after the effective date of Respondent's probation, Condition 17 stated:

28 "Respondent shall immediately submit to biological fluid testing, at Respondent's

1 cost, upon request by the Board or its designee. There will be no confidentiality in
2 test results; positive test results will be immediately reported to the Board and the
3 Respondent's current employer".

4 35. Respondent's probation is subject to revocation because Respondent was required to
5 submit to biological fluid testing upon request by the Board or its designee. However, Respondent
6 failed to provide a test sample December 1, 2010, December 13, 2010, January 14, 2011, January
7 20, 2011, February 4, 2011 and February 21, 2011, as required.
8

9 EIGHTH CAUSE TO REVOKE PROBATION

10 **(Failure to Comply With Probation Program)**

11 36. As previously noted, at all times after the effective date of Respondent's probation,
12 Condition 2 stated in part that: "Respondent shall fully comply with terms and conditions of the
13 probation established by the Board and shall cooperate with the representatives of the Board in its
14 monitoring and investigation of Respondent's compliance with the Probation Program.

15 37. Respondent's probation is subject to revocation because she failed to comply with
16 Condition 2, in that she failed to cooperate with the Board's representative(s) in monitoring and
17 investigation of Respondent's compliance with the Probation Program, specifically by reason of
18 her failure to comply with Conditions 1,2,5,11,14, 16 and 17 of the Board's Decision and Order
19 as more particularly described in paragraphs 19 through 37 above.

20 PRAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and
22 that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a
23 decision:

24 1. Revoking the probation that was granted by the Board of Vocational Nursing and
25 Psychiatric Technicians in Case No. PT-2003-1229/PT-2005-1805 and imposing the disciplinary
26 order that was stayed thereby revoking Psychiatric Technician License No. PT 31681 issued to
27 Kimberly Sheri Bell;
28

2. Revoking or suspending Psychiatric Technician License Number PT 31681, issued to Kimberly Sheri Bell;

3. Ordering Kimberly Sheri Bell to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: April 11, 2011.



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Board of Vocational Nursing and Psychiatric Technicians Case No. PT-2003-1229/PT-2005-1805

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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Case No. PT-2003-1229/PT-2005-1805

KIMBERLY SHERI BELL
P.O. Box 635
Atascadero, CA 93423

Psychiatric Technician License No.
PT 31681


Respondent.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on March 27, 2008.

IT IS SO ORDERED this 26th day of February, 2008.



John P. Vertido, L.V.N.
President

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 MARC D. GREENBAUM, State Bar No. 138213
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6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

8 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 KIMBERLY SHERI BELL
P.O. Box 635
13 Atascadero, CA 93423

14 Psychiatric Technician License No. PT 31681

15 Respondent.
16

Case No. PT-2003-1229/PT-2005-1805

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) is the Executive
22 Officer of the Board of Vocational Nursing and Psychiatric Technicians. She brought this action
23 solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney
24 General of the State of California, by Jami L. Cantore, Deputy Attorney General.

25 2. Kimberly Sheri Bell (Respondent) is representing herself in this
26 proceeding and has chosen not to exercise her right to be represented by counsel.

27 3. On or about April 30, 2003, the Board of Vocational Nursing and
28 Psychiatric Technicians issued Psychiatric Technician License No. PT 31681 to Kimberly Sheri

1 Bell. The License was in full force and effect at all times relevant to the charges brought in
2 Accusation No. PT 2003-1229/PT 2005-1805, and will expire on February 28, 2009, unless
3 renewed.

4 JURISDICTION

5 4. Accusation No. PT 2003-1229/PT 2005-1805 was filed before the Board
6 of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs,
7 and is currently pending against Respondent. The Accusation and all other statutorily required
8 documents were properly served on Respondent on March 22, 2007. Respondent timely filed her
9 Notice of Defense contesting the Accusation. A copy of Accusation No. PT 2003-1229/PT
10 2005-1805 is attached as Exhibit A and incorporated herein by reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read and understands the charges and allegations
13 in Accusation No. PT 2003-1229/PT 2005-1805. Respondent has also carefully read, and fully
14 understands the effects of this Stipulated Settlement and Disciplinary Order.

15 6. Respondent is fully aware of her legal rights in this matter, including the
16 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
17 counsel at her own expense; the right to confront and cross-examine the witnesses against her;
18 the right to present evidence and to testify on her own behalf; the right to the issuance of
19 subpoenas to compel the attendance of witnesses and the production of documents; the right to
20 reconsideration and court review of an adverse decision; and all other rights accorded by the
21 California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
23 each and every right set forth above.

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in
26 Accusation No. PT 2003-1229/PT 2005-1805.

27 9. Respondent agrees that her Psychiatric Technician License is subject to
28 discipline and she agrees to be bound by the Board of Vocational Nursing and Psychiatric

1 Technicians' imposition of discipline as set forth in the Disciplinary Order below.

2 CIRCUMSTANCES IN MITIGATION

3 10. Respondent Kimberly Sheri Bell has never been the subject of any
4 disciplinary action. She is admitting responsibility at an early stage in the proceedings.

5 RESERVATION

6 11. The admissions made by Respondent herein are only for the purposes of
7 this proceeding, or any other proceedings in which the Board of Vocational Nursing and
8 Psychiatric Technicians or other professional licensing agency is involved, and shall not be
9 admissible in any other criminal or civil proceeding.

10 CONTINGENCY

11 12. This stipulation shall be subject to approval by the Board of Vocational
12 Nursing and Psychiatric Technicians. Respondent understands and agrees that counsel for
13 Complainant and the staff of the Board of Vocational Nursing and Psychiatric Technicians may
14 communicate directly with the Board regarding this stipulation and settlement, without notice to
15 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
16 that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the
17 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
18 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
19 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board
20 shall not be disqualified from further action by having considered this matter.

21 OTHER MATTERS

22 13. The parties understand and agree that facsimile copies of this Stipulated
23 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
24 force and effect as the originals.

25 DISCIPLINARY ORDER

26 In consideration of the foregoing admissions and stipulations, the parties agree
27 that the Board may, without further notice or formal proceeding, issue and enter the following
28 Disciplinary Order:

1 IT IS HEREBY ORDERED that Psychiatric Technician License No. PT 31681
2 issued to Respondent Kimberly Sheri Bell is revoked. However, the revocation is stayed and
3 Respondent is placed on probation for three (3) years on the following terms and conditions.

4 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws,
5 including all statutes and regulations governing the license. Respondent shall submit, in writing,
6 a full and detailed account of any and all violations of the law to the Board within five (5) days of
7 occurrence. To ensure compliance with this term, respondent shall submit two (2) completed
8 fingerprint cards and the applicable fingerprint processing fees to the Board within thirty (30)
9 days of the effective date of the decision, unless the Board determines that fingerprint cards were
10 already submitted by Respondent as part of her licensure application process effective July 1,
11 1996. Respondent shall also submit a recent 2" x 2" photograph of herself within thirty (30) days
12 of the effective date of the decision.

13 2. **Compliance With Probation Program And Quarterly Report**
14 **Requirements.** Respondent shall fully comply with terms and conditions of the probation
15 established by the Board and shall cooperate with the representatives of the Board in its
16 monitoring and investigation of the Respondent's compliance with the Probation Program.

17 Respondent shall submit quarterly reports, under penalty of perjury, in a form
18 required by the Board. The reports shall certify and document compliance with all the conditions
19 of probation.

20 3. **Notification of Address And Telephone Number Change(s).**
21 Respondent shall notify the Board, in writing, within five (5) days of a change of residence or
22 mailing address, of her new address and any change in her work and/or home telephone numbers.

23 4. **Notification of Residency or Practice Outside of State.** Respondent
24 shall notify the Board, in writing, within five (5) days, if she leaves California to reside or
25 practice in another state.

26 Respondent shall notify the Board, in writing, within five (5) days, upon her return
27 to California.

28 The period of probation shall not run during the time Respondent is residing or

1 practicing outside California.

2 **5. Notification to Employer(s).** When currently employed or applying for
3 employment in any capacity in any health care profession, Respondent shall notify her employer
4 of the probationary status of Respondent's license. This notification to the Respondent's current
5 health care employer shall occur no later than the effective date of the Decision. Respondent
6 shall notify any prospective health care employer of her probationary status with the Board prior
7 to accepting such employment. This notification shall be by providing the employer or
8 prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

9 The Health Care Profession includes, but is not limited to: Licensed Vocational
10 Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency
11 Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary
12 technical health care positions.

13 Respondent shall cause each health care employer to submit quarterly reports to
14 the Board. The reports shall be on a form provided by the Board, shall include a performance
15 evaluation and such other information as may be required by the Board.

16 Respondent shall notify the Board, in writing, within five (5) days of any change
17 in employment status. Respondent shall notify the Board, in writing, if she is terminated from
18 any nursing or health care related employment with a full explanation of the circumstances
19 surrounding the termination.

20 **6. Interviews/meetings With Board Representative(s).** Respondent,
21 during the period of probation, shall appear in person at interviews/meetings as directed by the
22 Board, or its designated representatives.

23 **7. Employment Requirements And Limitations.** During probation,
24 Respondent shall work in her licensed capacity in the State of California. This practice shall
25 consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

26 While on probation, Respondent shall not work for a nurses' registry or in any
27 private duty position, a temporary nurse placement agency, as a faculty member in an accredited
28 or approved school of nursing, or as an instructor in a Board approved continuing education

1 course except as approved, in writing, by the Board. Respondent shall work only on a regularly
2 assigned, identified and predetermined work site(s) and shall not work in a float capacity except
3 as approved, in writing, by the Board.

4 **8. Supervision Requirements.** Respondent shall obtain prior approval from
5 the Board, before commencing any employment, regarding the level of supervision provided to
6 Respondent while employed as a licensed vocational nurse or psychiatric technician.

7 Respondent shall not function as a charge nurse (i.e., work in any healthcare
8 setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians,
9 certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric
10 technician during the period of probation except as approved, in writing, by the Board.

11 **9. Completion of Educational Course(s).** Respondent, at her own expense,
12 shall enroll and successfully complete a course(s) substantially related to the violation(s) no later
13 than the end of the first year of probation; or Respondent shall be suspended from practice, until
14 she has enrolled in and has successfully completed the specified course work.

15 The course work shall be in addition to that required for license renewal. The
16 Board shall notify Respondent of the course content and number of contact hours required.
17 Within thirty (30) days of the Board's written notification of assigned course work, Respondent
18 shall submit a written plan to comply with this requirement. The Board shall approve such plan
19 prior to enrollment in any course of study.

20 Upon successful completion of the course, Respondent shall cause the instructor
21 to furnish proof to the Board within thirty (30) days of course completion.

22 **10. Maintenance of Valid License.** Respondent shall, at all times while on
23 probation, maintain an active current license with the Board, including any period during which
24 suspension or probation is tolled.

25 Should respondent's license, by operation of law or otherwise, expire, upon
26 renewal or reinstatement respondent's license shall be subject to any and all terms of this
27 probation not previously satisfied.

28 ///

1 11. **Cost Recovery Requirements.** Respondent shall pay to the Board
2 pursuant to Business and Professions Code Section 125.3 the costs of investigation and
3 enforcement in this matter in the amount of \$4,199.75. Respondent shall be permitted to pay
4 these costs in a payment plan approved by the Board, with the payments to be completed no later
5 than three months prior to the end of the probation term. Failure to complete payment of cost
6 recovery within this time frame shall constitute a violation of probation which may subject
7 Respondent's license to outright revocation.

8 The Board may conditionally renew or reinstate, for a maximum of one year, the
9 license of any respondent who demonstrates financial hardship. Respondent shall enter into a
10 formal agreement with the Board to reimburse the unpaid costs within that one year period.

11 Except as provided above, the Board shall not renew or reinstate the license of any
12 Respondent who has failed to pay all the costs as directed in a Decision.

13 12. **Violation of Probation.** If Respondent violates the conditions of her
14 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
15 aside the stay order and impose the stayed discipline revocation of the Respondent's license. If
16 during the period of probation, an accusation or petition to revoke has been filed against the
17 Respondent's license or the Attorney General's Office has been requested to prepare an
18 accusation or petition to revoke probation against the Respondent's license, the probationary
19 period shall automatically be extended and shall not expire until the accusation or petition has
20 been acted upon by the Board. Upon successful completion of probation, the Respondent's
21 license will be fully restored.

22 13. **Rehabilitation Program.** Within thirty (30) days of the effective date of
23 the Decision, Respondent shall enter a rehabilitation and monitoring program specified by the
24 Board. Respondent shall successfully complete such treatment contract as may be recommended
25 by the program and approved by the Board.

26 Components of the treatment contract shall be relevant to the violation and to the
27 respondent's current status in recovery or rehabilitation. The components may include, but are
28 not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention

1 from drugs and alcohol, use of work site monitors, participation in chemical dependency
2 rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other
3 appropriate rehabilitation or monitoring programs. The cost for participation in this program
4 shall be paid by Respondent.

5 **14. Chemical Dependency Support/recovery Groups.** Within five (5) days
6 of the effective date of the Decision, Respondent shall begin attendance at a chemical
7 dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support
8 Group). Verified documentation of attendance shall be submitted by Respondent with each
9 quarterly report. Respondent shall continue attendance in such a group for the duration of
10 probation.

11 **15. Abstain From Controlled Substances.** Respondent shall completely
12 abstain from the personal use or possession of controlled substances, as defined in the California
13 Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of
14 the Business and Professions Code, except when lawfully prescribed by a licensed practitioner
15 for a bona fide illness.

16 **16. Abstain From Use of Alcohol.** Respondent shall completely abstain from
17 the use of alcoholic beverages during the period of probation.

18 **17. Submit Biological Fluid Samples.** Respondent shall immediately submit
19 to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. There
20 will be no confidentiality in test results; positive test results will be immediately reported to the
21 Board and the Respondent's current employer.

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DATED: 8.1.07

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Exhibit A

Accusation No. PT 2003-1229/PT 2005-1805

FILED

MAR 22 2007

Board of Vocational Nursing
and Psychiatric Technicians

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 MARC D. GREENBAUM, State Bar No. 138213
Supervising Deputy Attorney General
3 JAMI L. CANTORE, State Bar No. 165410
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2569
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. PT-2003-1229
PT-2005-1805

12 KIMBERLY S. BELL
PO Box 635
13 Atascadero, CA 93423

ACCUSATION

14 Psychiatric Technician License No. PT 31681

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
20 Accusation solely in her official capacity as the Executive Officer of the Board of Vocational
21 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

22 2. On or about April 30, 2003, the Board of Vocational Nursing and
23 Psychiatric Technicians issued Psychiatric Technician License No. PT 31681 to Kimberly S. Bell
24 (Respondent). The Psychiatric Technician License was in full force and effect at all times
25 relevant to the charges brought herein and will expire on February 28, 2009 unless renewed.

26 JURISDICTION

27 3 This Accusation is brought before the Board of Vocational Nursing and
28 Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the

1 following laws. All section references are to the Business and Professions Code unless otherwise
2 indicated.

3 STATUTORY PROVISIONS

4 4. Section 4520 of the Business and Professions Code (Code) provides, in
5 pertinent part, that the Board may discipline any licensed psychiatric technician for any reason
6 provided in Article 3 (commencing with section 4520) of the Psychiatric Technicians Law (Code
7 § 4500, et. seq.)

8 5. Section 118(b) of the Code provides, in pertinent part, that the expiration
9 of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during
10 the period within which the license may be renewed, restored, reissued or reinstated. Under
11 section 4545 of the Code, the Board may renew an expired license at any time within four years
12 after the expiration.

13 6. Section 4521 of the Code states:

14 "The board may suspend or revoke a license issued under this chapter [the
15 Psychiatric Technicians Law] for any of the following reasons:

16 "(a) Unprofessional conduct, which includes but is not limited to any of the
17 following:

18

19 "(4) Obtain or possess in violation of law, or prescribe, or except as directed by a
20 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself or furnish or
21 administer to another, any controlled substance as defined in Division 10 (commencing with
22 Section 11000) of the Health and Safety Code or any dangerous drug as defined in Article 8
23 (commencing with Section 4210) of Chapter 9 of Division 2 .

24

25 "(6) Be convicted of a criminal offense involving the falsification of records
26 concerning prescription, possession, or consumption of any of the substances described in
27 paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence of the
28 conviction. The board may inquire into the circumstances surrounding the commission of the

1 crime in order to fix the degree of discipline.

2
3 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or
4 abetting the violation of, or conspiring to violate any provision or terms of this chapter [the
5 Psychiatric Technicians Law].

6
7 "(f) Conviction of any offense substantially related to the qualifications,
8 functions, and duties of a psychiatric technician, in which event the record of the conviction shall
9 be conclusive evidence of the conviction. The board may inquire into the circumstances
10 surrounding the commission of the crime in order to fix the degree of discipline.

11
12 "(m) The commission of any act involving dishonesty, when that action is
13 substantially related to the duties and functions of the licensee."

14 7. Section 490 of the Code states:

15 "A board may suspend or revoke a license on the ground that the licensee has been
16 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
17 of the business or profession for which the license was issued. A conviction within the meaning
18 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
19 contendere. Any action which a board is permitted to take following the establishment of a
20 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
21 been affirmed on appeal, or when an order granting probation is made suspending the imposition
22 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
23 Penal Code."

24 8. California Code of Regulations, title 16, section 2578, states:

25 "For the purposes of denial, suspension, or revocation of a license pursuant to
26 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or
27 act shall be considered to be substantially related to the qualifications, functions or duties of a
28 licensed psychiatric technician if to a substantial degree it evidences present or potential

1 unfitness of a licensed psychiatric technician to perform the functions authorized by his license in
2 a manner consistent with the public health, safety, or welfare."

3 9. Section 11170 of the Health and Safety Code provides: "no person shall
4 prescribe, administer, or furnish a controlled substance for himself."

5 10. Section 11173 of the Health and Safety Code states:

6 "(a) No person shall obtain or attempt to obtain controlled substances, or procure
7 or attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
8 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

9 "(b) No person shall make a false statement in any prescription, order, report, or
10 record, required by the division."

11 11. Section 1253 of the Code provides, in pertinent part, that a Board may
12 request the administrative law judge to direct a licensee found to have committed a violation or
13 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
14 and enforcement of the case.

15 12. CONTROLLED SUBSTANCE

16 a. Vicodin: (Hydrocodone/APAP 5/500) a brand name for Hydrocodone and
17 Acetaminophen. Vicodin is a Schedule III controlled substance pursuant to Health and Safety
18 Code section 11056(e)(4) and classified as a dangerous drug pursuant to section 4022 of the
19 Code.

20 FIRST CAUSE FOR DISCIPLINE

21 (Conviction of a Substantially Related Crime)

22 13. Respondent is subject to disciplinary action under sections 4521,
23 subdivision (f), and 490 of the Code on the grounds of unprofessional conduct as defined by
24 California Code of Regulations, title 16, section 2578, in that Respondent was convicted of a
25 crime substantially related to the qualifications, functions, or duties of a psychiatric technician as
26 follows:

27 a. On or about February 9 2006, Respondent was convicted on a plea of nolo
28 contendere for one count of violating Penal Code section 484(A), a misdemeanor (petty theft), in

1 the Superior Court of California, County of San Luis Obispo, Case No. M000381670, entitled
2 *The People of the State of California v. Kimberly Sheri Bell*.

3 b. The circumstances surrounding the conviction are that in approximately
4 August 2005, Respondent took several blank prescription slips from her dentist's office.
5 Respondent forged approximately five to six prescriptions for Vicodin and had the prescriptions
6 filled at local pharmacies.

7 SECOND CAUSE FOR DISCIPLINE

8 (Dishonest, Fraudulent Act)

9 14. Respondent is subject to disciplinary action under section 4521,
10 subdivision (m), of the Code for violating Health and Safety Code section 11173, subdivision
11 (b), in that Respondent fraudulently issued prescriptions to herself and filled the prescriptions for
12 her own personal consumption, as fully set forth above in paragraph 13 and incorporated herein
13 by reference.

14 THIRD CAUSE FOR DISCIPLINE

15 (Obtained a Controlled Substance by Fraud, Deceit or Misrepresentation)

16 15. Respondent is subject to disciplinary action under section 4521,
17 subdivision (a)(4), of the Code for violating Health and Safety Code section 11173, subdivision
18 (a), in that Respondent obtained controlled substances by fraud, deceit, misrepresentation, or
19 subterfuge, as fully set forth above in paragraph 13 and incorporated herein by reference.

20 FIFTH CAUSE FOR DISCIPLINE

21 (Furnished a Controlled Substances to Oneself)

22 16. Respondent is subject to disciplinary action under section 4521,
23 subdivisions (a) and (d), of the Code for violating Health and Safety Code section 11170, in that
24 Respondent self-administered the controlled substance Vicodin without a valid prescription, as
25 fully set forth in paragraph 13 and incorporated herein by reference.

26 PRAYER

27 WHEREFORE, Complainant requests that a hearing be held on the matters herein
28 alleged and that, following the hearing, the Board of Vocational Nursing and Psychiatric

1 Technicians issue a decision:

2 1. Revoking or suspending Psychiatric Technician License No. PT 31681
3 issued to Kimberly S. Bell.

4 2. Ordering Kimberly S. Bell to pay the Board of Vocational Nursing and
5 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case
6 pursuant to Business and Professions Code section 125.3;

7 3. Taking such other and further action as deemed necessary and proper.

8
9 DATED: March 22, 2007

10
11 

12 TERESA BELLO-JONES, J.D., M.S.N., R.N.

13 Executive Officer

14 Board of Vocational Nursing and Psychiatric Technicians

15 Department of Consumer Affairs

16 State of California

17 Complainant
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